

No. 17358 ✓

**United States
Court of Appeals**
for the Ninth Circuit

MAURIE STARRELS and DORIS W. STARRELS,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

KENNY, MORRIS & IBANEZ,

ROBERT W. KENNY,

1557 Beverly Boulevard,
Los Angeles 26, California,

For Petitioners.

LOUIS F. OBERDORFER,

Assistant Attorney General,

HART H. SPIEGEL,

Chief Counsel,
Internal Revenue Service,
Washington 25, D. C.,

For Respondent.

The Tax Court of the United States

Docket No. 77031

MAURIE STARRELS and DORIS W. STARRELS,
Petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioners hereby petition for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Ap: LA: AA-ESM (CRW) 90-D) dated July 14, 1958 (Associate Chief, Appellate Division, 1250 Subway Terminal Building, 417 South Hill Street, Los Angeles 13, California) and as the basis for their case, allege as follows:

1. That petitioners are husband and wife, residing at 6531 West Fifth Street, Los Angeles 48, California. The return for the period here involved was filed with the District Director of the Internal Revenue Service at Los Angeles, California.

2. The notice of deficiency (a copy of which is attached, marked "Exhibit A") was mailed to the petitioners on July 14, 1958.

3. The deficiency as determined by the Commissioner, is in income taxes for the calendar year 1956, in the amount of \$1,530.87. The entire amount is in controversy.

4. The determination of tax set forth in said Notice of Deficiency is based upon an error of law in

holding that the amount of \$5,800.00, received by petitioner Doris W. Starrels from Loew's, Inc. in compensation for the violation of her rights of privacy by the production of a motion picture of the life story of Commander Frank W. Wead, USN, her deceased father, under the provisions of a contract with Loew's, Inc. dated November 9, 1954, was taxable.

5. The facts upon which petitioners rely as the basis of this case are as follows:

(a) Petitioner Doris W. Starrels is the daughter of the late Commander Frank W. Wead, USN.

(b) On November 9, 1954 petitioner Doris W. Starrels, entered into a contract with Loew's, Inc. in which it was recited that Loew's desired and intended to produce a photoplay "based on, adapted from, or using as a springboard the life story" of Commander Wead. As a consideration for the payment of an agreed sum of money (the taxability of which constitutes the dispute in this proceeding) the petitioner Doris W. Starrels, agreed that Loew's, Inc. could depict said petitioner, her father and other members of her family in photoplays, using their likenesses in photographs and the actual names of petitioner and other members of their family; including actual incidents involving Commander Wead and his family. In said contract petitioner, Doris W. Starrels, agreed that at no time would she claim that such photoplay or any use made of the family names, likenesses, pictures and characterizations would constitute a violation of any of her rights including her right of privacy and she released Loew's, Inc. from any claims arising out of or in connection with any photoplays produced by it.

(c) No services were performed nor any tangible property was ever delivered by petitioner Doris W. Starrels to Loew's, Inc.

(d) In the year 1956 Loew's, Inc. produced and distributed throughout the United States a feature motion picture entitled "The Wings of Eagles," starring John Wayne, Dan Daily and Maureen O'Hara, and depicting the birth of naval aviation and events taken from the life of petitioner Doris W. Starrels' deceased father, Commander Wead, USN.

(e) During the taxable year 1956, Loew's, Inc. paid to petitioner Doris W. Starrels the sum of \$5,800.00, pursuant to the terms of said contract of November 9, 1954.

Wherefore, the petitioners pray that this Court may try the case and determine that there is no deficiency in income tax due from the petitioners for the calendar year 1956 and give such other and further relief as may be just and equitable in the premises.

/s /MAURIE STARRELS

/s/ DORIS W. STARRELS

Petitioners

6531 West Fifth Street

Los Angeles 48, California

KENNY, MORRIS & IBANEZ

By ROBERT W. KENNY

Attorneys for Petitioners

1557 Beverly Boulevard

Los Angeles 26, California

MAdison 9-1137

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Duly Verified:

Form 1230 (App.)
1250 Subway Terminal Building
417 South Hill Street
Los Angeles 13, California

Ap:LA:AA-ESM
(CRW) 90-D

Mr. Maurie Starrels and
Mrs. Doris W. Starrels
Husband and Wife
6531 West Fifth Street
Los Angeles 48, California

Dear Mr. and Mrs. Starrels:

You are advised that the determination of your income tax liability for the taxable year (s) ended December 31, 1956, discloses a deficiency of \$1,530.87 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it

to the Assistant Regional Commissioner, Appellate, Room 1250, 417 So. Hill St., Los Angeles 13, California. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

RUSSELL C. HARRINGTON

Commissioner,

By

Associate Chief, Appellate Division

Enclosures:

Statement

IRS Pub. 160

Agreement Form

6-24-1958

Ap:LA:AA—ESM

(CRW) 90-D

Statement

Mr. Maurie Starrels and

Mrs. Doris W. Starrels

Husband and Wife

6531 West Fifth Street

Los Angeles 48, California

Tax Liability for the Taxable Year Ended

December 31, 1956

Year

1956

Income Tax

Deficiency

\$1,530.87

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated November 14, 1957, to your protest filed on April 29, 1958, and to statements made at the conference held on May 28, 1958.

A copy of this letter and a copy of the statement have been mailed to your authorized representative, Mr. Robert W. Kenny, 1557 Beverly Boulevard, Los Angeles 26, California

Adjustments to Taxable Income

Year 1956

Taxable income as disclosed		
by return		\$ 6,703.84
Additional income and unallowable deduction:		
(a) Income increased	\$5,800.00	
(b) Medical expense	181.87	5,981.87
	<hr/>	<hr/>
Taxable income as adjusted		\$12,685.71

Explanation of Adjustments

(a) It is determined that the amount of \$5,800.00, received by you under the terms of a contract with Loew's, Inc., which granted permission to produce the life story of Commander Frank W. Wead, deceased father of Mrs. Doris W. Starrels, constitutes taxable income under the provisions of the Internal Revenue Code of 1954.

(b) As a result of the addition to income, item (a), a medical expenses claimed in your return are adjusted as follows:

Adjusted gross income per return	\$14,214.49
Add: Income increased	5,800.00
Adjusted gross income as revised	<u>\$20,014.49</u>

	Per Return	As Adjusted
Medicine and drugs paid	<u>\$ 150.00</u>	<u>\$ 150.00</u>
Less: 1% of Adjusted Gross Income	142.14	200.14
Medicine and drugs reportable	<u>\$ 7.86</u>	<u>None</u>
Other medical expenses paid	4,388.04	\$ 4,388.04
Total medical expenses	<u>\$4,395.90</u>	<u>\$ 4,388.04</u>
Less: 3% of Adjusted Gross Income	426.42	600.43
Medical expenses allowable	<u>\$3,969.48</u>	<u>\$ 3,787.61</u>
Medical expenses disallowed		\$ 181.87

Computation of Tax
Year 1956

Taxable net income	\$12,685.71
Total tax on \$12,685.71	\$ 2,925.71
Less: Dividends Received Credit	141.24
Correct income tax liability	<u>\$ 2,784.47</u>
Income tax liability shown on return, Account No. BC 11484, Los Angeles District	1,253.60
Deficiency of income tax	<u>\$ 1,530.87</u>

Received, Filed and Served Oct. 2, 1958.

[Title of Tax Court and Cause.]

ANSWER

The Respondent, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1, 2, and 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the allegation of error contained in paragraph 4 of the petition.

5. (a) Admits the allegation contained in subparagraph (a) of paragraph 5 of the petition.

(b) Admits that on November 9, 1954, petitioner Doris W. Starrels entered into a contract with Loew's Inc. in which it was recited that Loew's desired and intended to produce a photoplay "based on, adapted from, or using as a springboard, the life story" of Commander Wead; and denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) and (e) Admits the allegations contained in subparagraphs (d) and (e) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the deficiency determined by the respondent be in all respects approved.

/s/ ARCH M. CANTRALL,
Chief Counsel,
Internal Revenue Service.

Of Counsel:

Melvin L. Sears
Regional Counsel

Richard W. Janes
Cyrus A. Johnson
Attorneys

Internal Revenue Service
1135 Subway Terminal Bldg.
417 So. Hill Street
Los Angeles 13, California.

Received and Filed November 28, 1958.

Served December 1, 1958.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated that for the purpose of this case, the following statements may be accepted as facts, and all exhibits referred to herein, and attached hereto, are incorporated in this stipulation and made a part thereof provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

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1. The petitioners,¹ Maurie and Doris W. Starrels, are individuals, husband and wife, residing at 6531 West Fifth Street, Los Angeles 48, California. They use the cash method of accounting, and file their returns jointly on a calendar year basis. Their joint return for the calendar year 1956 was filed with the District Director of Internal Revenue at Los Angeles, California. Attached hereto as Exhibit 1-A is a true and correct copy of such return.

2. Petitioner and her sister, Lila Berman, are the daughters and only issue, of the late Commander Frank W. Wead, U.S.N.

3. Loew's, Inc. desired to produce a motion picture concerning naval aviation, and ultimately did produce and market such a picture.

4. Loew's, Inc. intended the photoplay to be "based on, adapted from, or using as a springboard the life story" of Commander Wead.

5. In furtherance of this purpose Loew's, Inc. purchased from the Beverly Hills National Bank and Trust Company, trustee under the will of Commander Wead,

¹Maurie Starrels is a party to this proceeding only by reason of filing a joint return for the year 1956. Doris W. Starrels was the actual recipient of the disputed gain, and for convenience and clarity will hereinafter be referred to as the petitioner.

the literary material "We Plaster the Japs" which was written by Commander Wead and published in the September, 1944 issue of American Magazine. Attached hereto as Exhibit 2-B is a true and correct copy of the purchase agreement.

6. Loew's, Inc. also entered into an agreement with the petitioner and her sister on November 9, 1954. The agreement is contained in two documents, styled an "option" and a "consent." Attached hereto as Exhibits 3-C and 4-D are true and correct copies of these documents.

7. In 1956, Loew's, Inc. produced and distributed throughout the United States a feature motion picture in which was depicted events taken from the life of Commander Wead.

8. Pursuant to the contract of November 9, 1954, Loew's, Inc. paid \$5,800.00 to the petitioner in 1956.

/s/ ROBERT W. KENNY,
Counsel for Petitioner

/s/ HART H. SPIEGEL,
Chief Counsel
Internal Revenue Service
Counsel for Respondent.

Filed June 13, 1960.

[Title of Tax Court and Cause.]

Docket No. 77031. Filed January 26, 1961.

Held, payment made for a right of privacy release in connection with the production of a motion picture, in advance of any privacy invasion and in circumstances where no invasion of privacy was shown to have followed, constitutes taxable income.

Robert W. Kenny, Esq., for the petitioners.

Charles F. Quinlan, Esq., for the respondent.

OPINION

RAUM, Judge: The Commissioner determined a deficiency in petitioners' income tax for the year 1956 in the amount of \$1,530.87. The only question is whether an amount received in 1956 by petitioner Doris W. Starrels from Loew's, Inc. in exchange for a release of any claims she might have for invasion of her right of privacy constitutes taxable income. The facts have been stipulated.

Petitioners Maurie and Doris W. Starrels husband and wife, reside at 6531 West Fifth Street, Los Angeles 48, California. They filed their joint income tax return for the calendar year 1956 with the district director of internal revenue, Los Angeles, California.

Petitioner Doris W. Starrels, hereinafter referred to as Doris, and her sister, Lila Berman, are the daughters and only issue of the late Commander Frank W. Wead, U.S.N.

Loew's, Inc., hereinafter referred to as Loew's, desired to produce a motion picture concerning naval aviation and ultimately did produce and market such a picture. It intended the photoplay to be "based on, adapted from, or using as a springboard the life story" of Commander Wead.

In 1954 in furtherance of this purpose, Loew's purchased from the Beverly Hills National Bank and Trust Company, trustee under the will of Commander Wead, the literary material entitled "We Plaster the Japs" which was written by Commander Wead and published in the September 1944 issue of *American Magazine*.

Loew's also entered into an agreement with Doris and with Lila Berman on November 9, 1954. This agreement consisted of two documents: a letter from Loew's to Doris and Lila referred to as an option and a letter from the sisters to Loew's referred to as a release. Among other things, the terms of the agreement provide:

(a) Doris and Lila agreed to permit Loew's to produce, release, distribute, and exhibit a motion picture based on the life of their late father, Commander Wead.

(b) Doris and Lila agreed to permit Loew's to depict their deceased father, themselves, and other members of their family in the photoplay and in the advertising and publicity thereof and to use actual names or fictitious names for themselves and other members of their family.

(c) The sisters promised that at no time would they claim or assert that the photoplay or any matter there-

in contained or any use made by Loew's of the names, likenesses, pictures or characterizations of their father, themselves, or other members of their family under the agreement constituted a violation of any of their rights, including their rights of privacy.

(d) Doris and Lila agreed to deliver to Loew's such material in the way of photographs, letters, family documents, facts or other material or information and suggestions which were available and which could be helpful in the preparation of the motion picture.

(e) The sisters agreed that during the life of the agreement they would not authorize others to produce or exhibit any motion picture photoplay nor would they consent to the portrayal, depiction, or impersonation of their father or of themselves in any other motion picture.

(f) Loew's was further granted the right to advertise, promote, and exploit the photoplay by all means customarily used in the trade.

(g) Doris and Lila were to receive \$2,400 jointly upon the execution of the agreement and were to be paid further sums upon the happening of specified events and/or upon the satisfaction of certain conditions.

In 1956 Loew's produced and distributed through the United States a feature motion picture entitled "The Wings of Eagles" which depicted events taken from the life of Commander Wead.

Pursuant to the agreement of November 9, 1954, Loew's paid Doris the sum of \$5,800 in 1956. On her 1956 joint income tax return, Doris noted this receipt as follows: "\$5,800.00 received from Loew's, Inc.

M.G.M. Pictures as payment for invasion of personal family rights—not included as taxable income.” Respondent in his deficiency notice to petitioners determined that the entire amount of the receipt from Lowew’s should have been included in taxable income.

Petitioners’ sole contention is that a payment made for a consent to an invasion of privacy does not constitute taxable income. The contrary has been decided. *Damon Runyon, Jr. v. United States*, 281 F. 2d 590 (C. A. 5); *Ehrlich v. Higgins*, 52 F. Supp. 805 (S.D. N.Y.); *Meyer v. United States*, 173 F. Supp. 920 (E.D. Tenn.); *Helen D. Miller*, 35 T.C.—, decided this day. In each of these cases, the payments were held to result in the receipt of ordinary income. We believe the logic of these cases is controlling in the instant case, and thus we think the Commissioner correctly determined that the petitioners should have included the disputed \$5,800 in taxable income in 1956.

The factual situation in the present case bears a striking resemblance to the facts in the *Ehrlich*, *Meyer*, and *Miller* cases.¹ Here, as in those cases, a motion picture company made certain payments connected with the production of a partially biographical photoplay in exchange, at least in part, for a release of any right of privacy claims that the payees might assert based on the resulting motion picture. Here, as was also true in those cases, there is no evidence whatsoever that the resulting motion picture in fact injured or damaged the

¹Unlike *Runyon*, it has not been argued here that the payments involved the rights of the deceased father. Unlike *Miller*, it has not been argued here in petitioners’ behalf that a capital asset was sold nor in respondent’s behalf that personal services were compensated.

payee by an invasion of her right of privacy or in any other way.

Petitioners argue that if damages paid for a consummated invasion of the right of privacy would not be taxable, payments made pursuant to an agreement which included a consent to such an invasion should be equally exempt. Such an argument was specifically rejected in both *Ehrlich* and *Meyer*. In the instant case, Loew's was granted the right to invade Doris' right of privacy by agreement, but there is no evidence that the resulting motion picture released by Loew's in fact invaded her right of privacy in any manner. If the payments based on this agreement could be made tax exempt by merely referring to a right of privacy which was never invaded and possibly never intended to be invaded, the narrowly conceived statutory exclusion for damages on account of "personal injuries" (Section 104 (a)(2), Internal Revenue Code of 1954)² would be expanded beyond its normal meaning. We think that Congress intended no such result.

Whether money paid to obtain a release for a right of privacy invasion in advance of such an invasion should be excluded from taxable income where there is proof that an invasion of privacy actually followed—is a question not raised by the facts in the present case. It may well be that the voluntary advance waiv-

²The legal basis for petitioners' claim that the amount received was nontaxable is not clearly articulated in their brief. We think that the payment for surrender of the right of privacy consists of gross income under Section 61, and no statutory provision other than Section 104(a)(2) has been suggested as a basis for excluding the payment from gross income.

er of one's personal rights for compensation takes the case outside the purview of Section 104(a)(2). Thus, one may receive compensation for allowing medical experiments upon his body in circumstances that would constitute a tort if his prior consent had not been given. We have considerable doubt whether it was the purpose of Section 104(a)(2) to remove such compensation from the category of taxable income. However, that is a question that need not be reached on this record. Suffice it to say for purposes of deciding this case, we think no valid claim for exclusion may be made in this area without some showing of an injury which has been sustained. This the petitioners have wholly failed to do.

Decision will be entered for the respondent.

Tax Court of the United States

Washington

Docket No. 77031

MAURIE STARRELS and DORIS W. STARRELS,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed January 26, 1961, it is

Ordered and Decided: That there is a deficiency in income tax for the year 1956 in the amount of \$1,530.87.

/s/ ARNOLD RAUM

Judge.

Entered Jan. 27, 1961.

Served Jan. 30, 1961.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW OF DECISION AND
ORDER OF THE TAX COURT

To the Honorable Judges of the United States Court
of Appeals for the Ninth Circuit:

Now come Maurie Starrels and Doris W. Starrels,
Petitioners on Review herein, by their attorneys, Ken-
ny, Morris & Ibanez, and respectfully show:

I.

Jurisdiction

The Petitioners on Review (hereinafter referred to as the taxpayers) are individuals whose address is 6531 West Fifth Street, Los Angeles, California. Their income tax return for the calendar year 1956 was filed with the District Director of Internal Revenue, Los Angeles, California, which is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, wherein this review is sought.

The Respondent on Review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue, appointed and holding his office by virtue of the laws of the United States.

The taxpayer seeks a review of the decision of the Tax Court of the United States pursuant to the provisions of Sections 7482 and 7483 of the Internal Revenue Code of 1954.

II.

Prior Proceedings

On July 14, 1958, the Commissioner issued and sent to the taxpayer, by registered mail, a notice of deficiency in which he determined that the taxpayer owed a deficiency in income tax for the calendar year of 1956 in the amount of \$1,530.87.

Thereafter, on October 2, 1958, the taxpayer filed an appeal from said determination with the Tax Court of the United States. The case was tried on a stipulation of facts before the Honorable Arnold Raum, Judge of the Tax Court of the United States, on June 13, 1960, in Los Angeles, California.

On January 27, 1961, the Tax Court entered its opinion written by Judge Raum. On January 27, 1961, the Tax Court entered its decision ordering and deciding that the taxpayer owed a deficiency in income tax for the calendar year 1956 in the amount of \$1,530.87 (35 T.C.—, No. 69).

III.

Nature of the Controversy

Petitioner Doris W. Starrels, hereinafter referred to as "Doris" and her sister, Lila Berman, were the daughters and only issue of the late Commander Frank W. Wead, USN. Loew's, Inc. desired to produce a motion picture concerning naval aviation and ultimately did produce and market such a picture "based on, adopted from or using as a springboard the life story" of Commander Wead. On November 9, 1954 Loew's entered into an agreement with Doris and her sister.

By this agreement Doris and her sister agreed to permit Loew's to depict their deceased father, themselves and other members of their family in the photoplay, and the sisters promised that they would not claim that such use by Loew's of the names, likenesses, pictures, or characterizations of their father or themselves, or other members of their family would constitute a violation of any of their rights, including their rights of privacy.

In 1956, Loew's produced and distributed throughout the United States a feature motion picture entitled, "The Wings of Eagles," which depicted events taken from the life of Commander Wead. Pursuant to this Loew's paid Doris the sum of \$5,800.00 in 1956.

The sole contention presented by petitioners is that this payment was made for a consent to an invasion of a personal right of privacy and as such does not constitute taxable income.

IV.

Assignment of Errors

The taxpayers aver that in the opinion and final decision rendered and entered by the Tax Court of the United States that court erred as follows:

1. In holding that the money received from Loew's was taxable income on the stated ground of absence of evidence that the motion picture, in fact, injured or damaged the payee by an invasion of her right of privacy or in any other way.

2. In failing to rule upon petitioners' contention that, unlike libel and slander, the gist of the action in privacy cases is not injury to the character or rep-

utation, and that an invasion of privacy occurs without regard to any effect which the publication may have on the standing of the individual in the community.

3. In that the decision was contrary to law.

Wherefore, taxpayers petition that the opinion and decision hereinabove referred to be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and with the Rules of said court and transmitted to the clerk of said court for filing; and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

KENNY, MORRIS & IBANEZ

/s/ By ROBERT W. KENNY

Attorneys for Petitioners

on Review

Duly Verified.

Received and Filed Mar. 23, 1961.

[Endorsed]: No. 17358. United States Court of Appeals for the Ninth Circuit. Maurie Starrels and Doris W. Starrels, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Petition to Review a Decision of the Tax Court of the United States.

Filed: April 24, 1961.

Docketed: May 9, 1961.

/s/ FRANK H. SCHMID,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals

For the Ninth Circuit

No. 17358

MAURIE STARRELS and DORIS W. STARRELS

Petitioners in Review

vs.

COMMISSIONER OF INTERNAL REVENUE

Respondent on Review

PETITIONERS' STATEMENT OF POINTS

Comes now the petitioners on review in the above entitled cause by and through their attorneys, hereby state that they intend to rely upon the following points in this proceeding:

1. The Tax Court of the United States erred in holding that the money received from Loew's was taxable income because of the absence of evidence that the motion picture, in fact, injured or damaged the payee by an invasion of her right of privacy or in any other way.

2. In failing to rule upon petitioners' contention that, unlike libel and slander, the gist of the action in privacy cases is not injury to the character or reputation, and that an invasion of privacy occurs without regard to any effect which the publication may have on the standing of the individual in the community.

3. In that the decision was contrary to law.

KENNY, MORRIS & IBANEZ

By ROBERT W. KENNY

Attorneys for Petitioners on Review

[Endorsed]: Filed June 28, 1961. Frank H. Schmid,
Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION RE ORIGINAL EXHIBITS

Subject to the approval of the Court it is hereby stipulated and agreed by and between the parties in the above-entitled cause, through their counsel of record, that Exhibits 1-A through 4-D attached to the Stipulation of Facts be not included in the printed record, and that they may be referred to by the parties in all briefs (or quoted or otherwise reproduced in whole or in part therein) and at the oral argument, and that they may be considered and relied upon by the Court in their original form as if contained in the printed record.

KENNY, MORRIS & IBANEZ

By ROBERT W. KENNY

Attorneys for Petitioners

/s/ LOUIS F. OBERDORFER

Assistant Attorney General

Attorney for Respondent

July 31, 1961.

So Ordered:

/s/ RICHARD H. CHAMBERS,

Chief Judge, U. S. Court of Appeals for
the Ninth Circuit.

[Endorsed]: Filed Aug. 7, 1961. Frank H. Schmid,
Clerk.

